



April 6, 2000

Ms. Daisy A. Stiner  
Executive Director  
Texas Department of Housing and Community Affairs  
P. O. Box 13941  
Austin, Texas 78711-3941

OR2000-1327

Dear Ms. Stiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 133894.

The Texas Department of Housing and Community Affairs (the "department") received a request for all records and documents pertaining to several named third parties for the time period of January 1, 1994 through January, 2000. You state that the department does not have an opinion as to whether the requested information should be withheld. You suggest that the requested information is excepted from disclosure under section 552.110(b) of the Government Code, an exception to disclosure that protects third party rights.

You suggest that the property and privacy rights of third parties may be implicated by the release of the requested information. You state that the department notified Windcrest/Yager I, Ltd. and Grace Properties #20, Ltd., the companies whose information is responsive to the request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). Section 552.305(d) of the Act requires a governmental body to make a good faith effort to notify a party whose proprietary interest may be implicated by the release of the requested information. The third party notice must be sent within ten days of the governmental body's receipt of the request and must include a copy of the written request for information and a statement in the form prescribed by the

attorney general.<sup>1</sup> The third party may submit to the attorney general, within ten days of receiving the notice, its reasons why the information in question should be withheld.

Section 552.110(b) of the Government Code protects the property interests of private parties by excepting from disclosure commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. Neither Windcrest/Yager I, Ltd. nor Grace Properties #20, Ltd. submitted objections to the release of its information; therefore, we have no basis to conclude that the requested information is excepted from disclosure under section 552.110(b). *See* Open Records Decision No. 661 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure). The department must, therefore, release the requested information to the requestor.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

---

<sup>1</sup>The form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General's web site at [www.oag.state.tx.us](http://www.oag.state.tx.us).

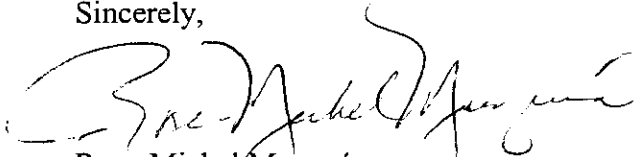
<sup>2</sup>Included in the documents the department submitted for review is a copy of a request for information from the same requestor dated October 20, 1998 seeking the same information for the time period of January 1, 1994 through January 1, 1997. As the department has apparently withheld the information responsive to this earlier request without requesting a decision from this office, the information is presumed to be public. *See* Gov't Code §552.302, *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ).

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the department or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía", written over a horizontal line.

Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/ch

Ref: ID# 133894

Encl. Submitted documents